

Submitted November 2, 2005
Approved As Amended
Date November 2, 2005

**MINUTES OF THE ROCKVILLE PLANNING COMMISSION
MEETING NO. 17-05
Wednesday, September 28, 2005**

The City of Rockville Planning Commission convened in regular session in the Mayor and Council Chambers at 7:00 p.m., Wednesday, September 28, 2005.

PRESENT

John Britton, Chair
Steve Johnson
Frank Hilton Gerald Holtz
Sarah Medearis Kate Ostell
Robin Wiener

Present: Art Chambers, Director of Community Planning & Development Services
Jim Wasilak, Chief of Planning
Sondra Block, Assistant City Attorney
Deane Mellander, Planner III
Castor Chasten, Planner III
Margaret Hall, Planner II

Commissioner Britton informed the Commission and viewers that the October meeting date of October 19 has been changed to October 26.

REVIEW AND ACTION

Preliminary Subdivision Plan PLT2004-00439, Fallsgrove Estates – for the creation of six residential lots on 4.81 acres in the R-S (Suburban Residential) Zone, located at 9104, 9110 and 9150 Darnestown Road. The applicants are Rockville Heritage Partners, LLC and Darnestown Development, LLC.

Previous approvals for this property include an Alzheimer's facility and a private school. The Alzheimer's facility was approved on July 11, 2001 and has expired. The school was approved on June 14, 2002 and the application is still active but within its final time extension.

Ms. Hall presented the staff report. Ms. Hall stated that this preliminary subdivision application involves three residentially developed lots that contain a total of 209,605 square feet of land. The request is for approval of a six-lot subdivision that will be served off a crescent shaped service drive. The service drive is an important part of the

recommendation for approval of this proposal. Initially, an eight-lot subdivision was proposed for the property. It involved two sets of driveways that served four houses each. There were two houses located in the front and two houses located in the back served off long pipestem lots. During the review, it was determined that this configuration would not work, mostly due to complications associated with trash removal and maintenance of such long driveways. Although the trash trucks currently stop on Darnestown Road to pickup trash, allowing new ones was determined to be unacceptable to the Department of Public Works and the County. Further, the Zoning Ordinance requires either reverse frontage or a service drive when a subdivision is located along an arterial street or major highway.

Mr. Hall stated that the next design also included eight lots, but included a reduced width horse shoe shaped right-of-way that would provide frontage for all of the lots on a right-of-way and take the trash and delivery trucks off Darnestown Road. Further review of that option reveal the elimination of nearly all the mature trees on the site and measures that would more than likely affect the long-term survivability of the fifty-inch Oak tree. The bisecting of the property also resulted in lots that were not very deep. The depth of the rear lots also meant that the homes located on them would be placed very close to the properties located to the rear. Based on that, the Department of Public Works staff could not recommend approval of the reduced width right-of-way.

Ms. Hall noted that they had a contract purchaser at the time, who wanted the eight lots. The owners of the property came back with this proposal to include six lots instead of the eight proposed in the prior two designs. The plan was also altered to include a service drive. The preliminary subdivision plan now includes lots that are substantially sized, the ability to save the existing trees as well as significant area on which to plant new ones, the ability to pull the new houses a significant distance from the homes behind them and the creation of an outlot between the service drive and Darnestown Road to be planted with landscaping that would buffer the new homes from the street.

In response to Commissioner Britton, Ms. Hall explained the historic criteria of the existing houses. She stated that at the time the Historic District Commission (HDC) evaluated the three houses, it was agreed that the houses built in 1898 and 1928 did not meet the criteria requirements. The third house that was built in 1948 has not reached 50 years old at the time these houses were evaluated by the HDC.

Ms. Block stated that this property was recently annexed into the City, therefore, the houses have no historical relation to City history.

Commissioner Britton questioned whether the applicant does not believe the school (The Goddard School) is viable. Commissioner Britton stated that the Commission recently voted to extend their permit. He asked Ms. Hall if the applicant has decided that the school is not a viable option for the subject property. Ms. Hall replied that that was correct.

Commissioner Johnson inquired about the service road and that a dedicated left hand lane is depicted on the record plat. Ms. Hall stated that the left hand lane turn is not just for the

service road, it would serve further down to Glenora Lane. Ms. Hall noted that it would also serve as a lengthening of the left hand turn lane at Glenora.

In response to Commissioner Holtz, Ms. Hall stated that the service drive would be one way only.

Commissioner Hilton questioned the next step after this application if it were approved. Ms. Hall replied that the applicant would have to submit for a final record plat within two years. The record plat would then be recorded if all conditions were met.

Commissioner Medearis stated that she was surprised to see that this property was within the city limits. She said that she lives in that area. She stated that she knows that the Dav Road neighborhood is outside of the city limits. Ms. Hall stated that Dav Road area has never been considered for annexation because the road does not meet the right-of-way width or road code and the City did not want to accept it for maintenance. Commissioner Medearis inquired about the water and sewer.

In response to Commissioner Ostell, Ms. Hall stated that the lots far exceed 20,000 square feet each.

Commissioner Wiener stated that she drives in that area everyday and those turning left into Fallsgrove; it backs up the traffic. She asked if there has been a traffic study for that area. Ms. Hall stated that the applicants have submitted a traffic study and it is part of what Montgomery County has reviewed in requiring that that left hand turn lane be put in the middle so drivers can sit out there and wait without backing up the traffic.

Yum Yu Cheng, Attorney with Linowes and Blocher, presented the applicants' request. Ms. Yum Yu Cheng stated that Mr. Don Feltman and Mr. Ross Flax, representatives of the applicants. Ms. Yum Yu Cheng stated that Mr. Flax has recently met with the neighbors to show them the latest plans, which shows the latest plan of six lots for single-family homes, which would generate significantly less traffic than the two projects that were previously approved. She noted other than some minor modifications to Conditions 13, 14 and 15, the applicants agree to all of the conditions of approval listed in the staff report.

Ms. Yum Yu Cheng stated that the applicants have assessed these modifications with staff and they have indicated no objections to these changes. In fact, staff assisted them with the language for the modifications. Condition 13 current reads "must comply with conditions in the memorandums dated January 19, 2005 and August 10, 2005 from the Montgomery County Department of Permitting Services." This condition deals with primarily with access from and to Darnestown Road, dedication and Darnestown Road improvements such as providing five-foot sidewalks, curb and gutter, and restriping markings along the road. Ms. Yum Yu Cheng stated that, yesterday, she spoke to the County staff who reviewed this and she indicated that her comments were based on an earlier version of the plan and that she would be willing to work with the applicants during the access permit stage to allow more flexibility on access to Darnestown Road, particularly, to make that left turn out of eastern access points. Ms. Yum Yu Cheng asked that Condition 13 be changed

to allow that flexibility because now the conditions that are listed in those memorandums do not allow that flexibility. She requested that the language in Condition 13 be changed to read "Must comply with conditions as approved by the Montgomery County Department of Permitting Services at the access permit stage." Ms. Yum Yu Cheng clarified that there was not a traffic study done on this area, only a traffic statement. County staff has reviewed the safety concerns regarding traffic turning left into the Fallsgrove development.

Ms. Yum Yu Cheng stated that Conditions 14 and 15, which deal with providing improvements beyond the applicants' property and onto other properties owned privately and by the County. Condition 14 currently reads, "Provide a 5 foot sidewalk and a minimum 9 foot tree lawn along entire frontage of Darnestown Road extending to Glenora Lane per City Department of Public Works and Montgomery County Department of Public Works and Transportation." Condition 15 currently reads, "Provide curb and gutter along site frontage and extend to existing curb and gutter near Glenora Lane." Because these extensions occur on other properties, they would need to get consent of the appropriate property owners and there needs to be sufficient existing right-of-way to accommodate these improvements. Therefore, they request that conditions be revised to include language to reflect these modifications. Ms. Yum Yu Cheng suggested adding the language to the end of both Conditions 14 and 15 to read, "Provided there is sufficient existing right-of-way to accommodate these improvements and obtain consent from the appropriate property owners."

Ms. Yum Yu Cheng explained the size of the lots. She said that the size is between 25,000 to 35,000 square feet.

Ms. Yum Yu Cheng explained that the use permit for The Goddard School is not terminated until a building permit is issued for the construction of a single family home on this site.

Mike Watkins with Macris, Hendricks & Glascock stated that the applicants are providing their proportionate share of infrastructure improvements and there are existing water and sewer lines along Darnestown Road that would be carried across the frontage to accommodate future connections to the subject properties. With regard to the structures, the plan was initiated by a different applicant; the applicant proceeded just to assume the house footprints for graphical representation. With regard to Condition 16, it was just to confirm that the property is dedicating its appropriate right-of-way as referenced in the City's master plan and dedicated by Montgomery County.

Commissioner Holtz asked who owns this property. Ms. Yum Yu Cheng explained the owners' of this property are two entities, Rockville Heritage Partners own 9104 and 9110 Darnestown Road and Darnestown Development own the property intended for The Goddard School. The owners' intent is to put out a bid for potential builders to purchase this property to build homes on the subject property.

Commissioner Hilton questioned whether the approval for the school runs with the land. He said he did not believe there would be two approvals running at the same time. Ms.

Yum Yu Cheng stated that the use permit for The Goddard School is still the current owner of the property. They are just preserving their right until they get this approval.

Ms. Block stated that this is a preliminary plan approval. Once that plat is recorded, that changes, and they are not going to record their plant until they have a buyer for this property.

In response to Commissioner Ostell, Ms. Hall explained that if the applicants recorded this plat with the residential lots and they wanted to re-implement either the Alzheimer's facility or The Goddard School, they would have to go through the subdivision process again to create lots like those that they had before and erase the lines that would be created by this plat.

Commissioner Ostell inquired about the footprints of the houses. She asked Mr. Watkins about the size of the houses proposed. Mr. Watkins replied that he does not now the footprints of the houses at this time. However, he feels that the lots would not be larger than shown on the plat because of the Zoning Ordinance lot coverage requirements.

The Commission further discussed concerns regarding the size of the proposed homes, spacing of the lots, Conditions 14, 15, and 16 as modified, safety of pedestrians crossing Darnestown Road, sidewalk on Darnestown Road, possible mansionization encroachment, a buffer between the proposed homes and the existing homes, stormwater treatment, status of the right-of-way in the area, and whether there would be a precedent for use of "eminent domain".

The following citizens testified:

Guy Hanacek, 2290 Glenmore Terrace, testified that everybody in his neighborhood is quite pleased with the proposal and nobody has voiced any opposition.

Rusty Richards, 2288 Glenmore Terrace, stated that he lives next door to Guy Hanacek and he seconds his remarks. He expressed his concern that the building may come back and pull variances and special exceptions to get eight lots on the property rather than six lots. Mr. Richards stated that he needs some assurance that six lots would remain on the plat. He said he said he would like to see the large tree remain. He said he wants some assurance that what is proposed along with the setbacks, 50 foot Oak tree will not be changed. He spoke about Fallsgrove development and how the builders and developers came back to the City and received many changes to the plan. The plan became a far more dense development than initially planned and his concern is that it might happen to this plan.

Commissioner Hilton stated that he was offended by Mr. Richards' comments. Mr. Richards stated that he not pointing a finger at anyone, it is just a perception that this sort of thing happens. Mr. Richards noted that it is essential that the citizens understand that they have people on the Commission who have the interest of the neighborhood.

Commissioner Britton commented that Mr. Richards' points are well taken. He stated that if there any changes to be made the applicants would have to come back before the Commission or the Board of Appeals with the changes. Of course, there is no guarantee that a majority of the Commissioners would be here at the time it came back because Commission terms do expire. Commissioner Britton suggested that a couple of conditions such as maintaining the setback, maintaining the Oak tree could be added to assure the community. Ms. Hall stated that there is no guarantee that somebody would not ask for more and it is not something that staff is willing to support at this location, given the conditions and the surrounding community, are very important. The City Forester is going to put the Oak tree in Forest Conservation Plan. Commissioner Britton asked if these conditions could be included in the conditions and would that be a problem. Ms. Hall replied that the Commission could create greater setbacks and add the tree.

Commissioner Ostell suggested setting a minimum setback. Ms. Hall stated that part of the plat is that it establishes the minimum building restriction lines.

Mr. Hanacek stated that the trees behind the properties are nice, and some could be taken down.

Ms. Hall stated that the City Forester has identified some trees in the back to be saved. Ms. Hall noted that there would be reforestation on and off the site.

Richard Peloquin, 9102 Darnestown Road, stated that the subject property is directly east of this subdivision. Mr. Peloquin expressed two concerns: 1) the tree situation. He said he bought his property in 1970. He bought it because of the trees in this specific area. The way this property is laid out it shows that the many trees left in the back yards of these lots, but the lot that immediately adjoins his property would be in his front yard. Mr. Peloquin stated that with the prior plan with the eight homes put houses further back of his property because they were stacked, front and back where the current proposal of six homes would be in a single row. He said he is concerned with the possible decrease in the value of his property because of the arrangement of one of the proposed homes that would be placed in his front yard and for the general forestation.

Commissioner Britton asked how the side yard setbacks work in this situation. Ms. Hall explained that the side setback would exist between the proposed houses and Mr. Peloquin's property. The rear yard setback is not shown on the plat correctly. It has to be corrected. Ms. Hall stated that the distance between Mr. Peloquin's house and the proposed last home on the property line. Ms. Hall replied that it looks as though 26 to 30 feet.

Commissioner Medearis asked Mr. Peloquin if he would favor forestation that would provide visual coverage along that property line. Mr. Peloquin replied that there are many shrubs there now, which block the view of the road.

The Commission discussed concerns regarding the placement of the homes, setback restrictions and forestation.

Ms. Hall stated that perhaps the eight lots would have kept the houses farther away from Mr. Peloquin's house. In particular, the original pipestem lots might have kept the house farther away from his property. The second proposal, however, with its crescent shape with a road that cuts through it, would have been no different in the placement of the house. In fact, that proposal had the houses coming in closer to the property line than with the six lots. Mr. Peloquin's situation is not one that is normal nor to place the house so far back from the property line. It is kind of an oddity.

Ms. Hall recommended not to make the setback requirement so restrictive that they so that they could only put tiny decks on rear of the houses that cannot be used properly.

Mr. Watkins commented that with regard of maintaining a level of flexibility and also accomplishing the City's goals with regard to forest conservation. They are proposing plantings on the site. Mr. Watkins they are proposing a conservation easement on the site that would protect the plantings they are providing on site as well as provide that additional level of certainty with regard to the placement of the proposed homes.

Mr. Watkins said he would be reluctant to add additional setbacks than what is required in the Zoning Ordinance. He said he believes the Forest Conservation plan that is in for review now in addition with the conservation easement and the plantings to be provided, he believes they accommodate the separation, the buffering, and maintain their flexibility with the placement of the proposed homes in the future without comprising what would be approved this evening.

Ms. Block explained that the Mayor and Council expressed as a matter of policy that they did not want easements on single-family homes because problems would arise regarding cutting down a tree, etc. The general policy has been that the City did not want to put that burden on the homeowner.

Ms. Hall stated that it is her feeling that if the Commission wants to protect the setbacks as shown on the plan, a building restriction line needs to be placed that forces the homes up towards the front of the property.

In response to Commissioner Holtz, Ms. Hall stated that if the Commission does not approve of the 35-foot setback shown on the subdivision plan, it should pick another number.

In response to the Commission, Ms. Hall stated that the Commission could wait until the final plat comes in, by then staff should have the final approval for the Forest Conservation plan and staff could then see how the dimensions relate to each other and at that time place the building restriction line on the final record plat before the Commission. Mr. Wasilak suggested that the Commission could fashion a general condition with regard to the building restriction line so that it is carried through to the final record plat.

Commissioner Ostell commented that this property is very close to the five-acre Planned Residential Unit (PRU) cut-off. She asked if there were any chance of somebody coming along and adding a plan to make this a PRU. Ms. Hall replied that that would be a separate application. She said that the real constraint with this property is that if it were wide and not so deep, and they could put a straight service drive on it and the property could be chopped up into pieces, it would be a simple thing. The problem is with configuration of the lots.

Commissioner Medearis noted that since this area does not have sidewalks, it is really not amenable to bus stops, either for public transport or for school transport. She asked if this property leads into Lakewood Elementary school and the Richard Montgomery High School district. Ms. Hall said that she believes it is the Richard Montgomery cluster. Ms. Hall also noted that that is part of the reason for having a service drive so that busses, trash trucks, delivery trucks would not have to stop on Darnestown Road.

Commissioner Britton suggested that in Condition 2 regarding the Forest Stand Delineation and Forest Conservation Plans that general language be added to include preservation of the identified significant Oak tree and forestation around the perimeter of the development site. Ms. Yum Yu Cheng said that was acceptable.

Commissioner Britton asked what would be the appropriate language for setting a placeholder for the future discussion for the future placement of a setback. Ms. Hall recommended, "That at the final record plat stage, plans be reviewed for building restriction line placement.

Mr. Watkins suggested including language in Condition 2 such that the applicants are proffering to work with the adjacent property owner with comprehensive screening and landscape plan between the two properties.

Commissioner Britton included the language in Condition 2 to read "with the preservation of the Oak tree, forestation of the rear of the property and the appropriate screening for side lots in the front yard, east and west".

Mr. Wasilak recommended language for a new Condition 17 to read, "A building restriction line that reflects the final Forest Conservation plan and maximizes tree preservation along the rear property line shall be included on the final record plat for purposes of the safety, health, and welfare of the adjoining properties in the Rockville Park community."

Commissioner Hilton stated that if the Commission were to impose a change in setbacks, how would a developer appeal that? Ms. Hall replied that, prior to recordation, they could come back to the Commission to have another look at the plan.

Ms. Block stated that the Board of Appeals does consider variances as a setback. Ms. Hall noted that if they call this a building restriction line and not a setback. That is saying that they do not want that line to be crossed.

Commissioner Hilton stressed that he is comfortable with changing what is required in the Ordinance.

Ms. Block stated that she is inclined to believe that setback is the functional equivalent of the building restriction line. She said she feels that if someone came in and wanted to put on an addition, they could file a variance and try to seek a variance, but they would have an extremely difficult time in having it approved because of what had been conditioned on the property by the Planning Commission. Ms. Block recommended that if the Commission establishes a building restriction line, it should accommodate it with a normal use and expected use of the property to be, otherwise, it would create some problems for the future owners.

Commissioner Ostell moved, seconded by Commissioner Wiener to approve Preliminary Subdivision Plan PLT2004-00439, Falls Grove Estates per staff recommendations and subject to modifications to Conditions 2, 13, 14, 15, and the addition of Condition 17 as discussed this evening. The motion passed on a vote of 5-0-2 with Commissioners Holtz and Hilton abstaining. Commissioner Hilton stated that he cannot support Condition 17.

USE2005-00690, National Lutheran Home – for the construction of five triplex units (15 total units) in the R-E (Residential Estate) Zone at the National Lutheran Home at 9701 Veirs Drive, near the intersection of Wescott Place and Monterra Court.

Mr. Chasten presented the staff report. Mr. Chasten that the use permit has been submitted in accordance with the previously approved Special Exception SPX2004-00350. This approval allowed the applicant to expand the number of independent living units located on the National Lutheran Home property. The applicant plans to construct five new one-story triplex villas, each villa containing three living units for elderly persons able to live in an independent setting. The new units will be constructed on undeveloped property abutting the northeast portion of the National Lutheran Home campus located at the northern terminus of the intersection of Wescott Place and Monterra Court. The units will be comprised of two bedrooms, one and a half bathrooms, living and dining rooms, laundry facilities and some will be design with sunrooms.

Mr. Chasten stated that, currently, the National Lutheran Home property, excluding the parcel, which is the subject of this use permit proposal, is approximately 27 acres in size. The property is currently improved with a 300-bed nursing home with accessory and support facilities along with 44 one-story triplex living units, which are located in the eastern and western portions of the site. The National Lutheran Home campus is bounded to the north by the Lakewood Country Club and to the east, south and northwest by single-family residential dwelling units. The existing complex was developed in the mid to late 1970s. Under the proposal as submitted, the 3.27 acres of land abutting the site area where the last five triplex living units were constructed in the mid to late 1990s. Vehicular access to the new triplex dwelling units will be via the intersection of Wescott Place and Monterra Court. In order to consolidate the new additional 3.27 acres into the existing 27-acre site, construct the 15 new independent living units on the subject property, the applicant requests approval of the subject use permit and development proposal as submitted. Each

of the new independent units will be provided two on-site parking spaces. There will be a total of 32 parking spaces provided for this new enclave. The subject parcel will be landscaped and new trees planted in accordance with the requirements of both the zoning and tree preservation ordinances. The applicant is also working with the City staff regarding the design of stormwater management facilities.

Commissioner Hilton referred to Exhibit 1. He said there is a note on the exhibit that says, "exposed foundation walls". He asked if there are currently foundations out there. Mr. Chasten stated that he would refer to the engineer. Commissioner Hilton noted that there is a line drawn on the exhibit that says "building restriction line". Mr. Chasten explained that that building restriction line relative to this plan is a building setback line as per the Zoning Ordinance. Commissioner Hilton stated that one of the units hits that line. Mr. Chasten stated that that corner complies with the setback requirements; the unit does not cross that line.

The Commission discussed concerns regarding stormwater management on and off the property.

Harry Lerch, Attorney with Lerch, Early & Brewer, presented the applicant's request. Mr. Lerch stated that the conditions are acceptable. He noted that they are proposing sidewalks around the cul-de-sacs and the small dumpster will be screened.

The Commission further discussed concerns regarding handicapped parking spaces, exposed foundation walls, grading of property, and discussed whether the stairs, stoops and patios comply with the setback lines.

Jeff Zions, 5 Monterra Court stated that he is a neighbor of National Lutheran Home and is in favor of the development. National Lutheran Home residents are great neighbors. The applicant is committed to building the sidewalk, and they do a good job screening. He noted that his only aesthetic complain are the dumpsters, which will be screened.

Commissioner Holtz moved, seconded by Commissioner Hilton to approve USE2005-00690, National Lutheran Home per staff recommendations. The motion passed on a vote of 7-0.

BRIEFING

Adequate Public Facilities Ordinance (APFO) and Standards – to brief the Commission on the status and revisions to the standards prior to Mayor and Council public hearing October 10, 2005.

Mr. Mellander presented the briefing. He presented the major modifications discussed at worksessions and subsequent actions taken by the Mayor and Council.

The Commission discussed concerns about traffic and transportation improvements, water and sewer capacity, Montgomery County Public Schools program capacity data, learning

cottages, development projects that have already been approved and do not have to commit to the APFO regulations.

COMMISSION ITEMS

Chief of Planning Report

Mr. Wasilak reported on the upcoming Planning Commission agenda and that the October meeting dates are October 5 and October 26.

Mr. Wasilak stated that a historic district map amendment and white papers for the Zoning Ordinance is scheduled for the October 5th meeting agenda. There will be a couple of special exception recommendations and one residential variance recommendation scheduled for October 26. November 2 meeting agenda will have quite a few development applications on it.

Mr. Wasilak commented that there is not going to be a moratorium for mansionization issues. He stated that a text amendment will be coming before the Commission in October or November to address these issue.

Minutes

Commissioner Johnson moved, seconded by Commissioner Wiener to approve the minutes of meetings no. 12-05 as written. The motion passed on a vote of 5-0-2 with Commissioners Ostell and Medearis abstaining.

Commissioner Johnson moved, seconded by Commissioner Ostell to approve the minutes of meeting no. 13-05 as written. The motion passed on a vote of 5-0-1 with Commissioners Wiener and Medearis abstaining.

ADJOURN

After further discussion, the meeting adjourned at 9:32 p.m.

Respectfully submitted,

Tyler Tansing, Commission Secretary